IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08/03/2004

Coram

THE HONOURABLE MR.JUSTICE R.JAYASIMHA BABU
and
THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM

Writ Petition No.1910 of 2001 and Writ Petition No. 1911 of 2001

W.P.No.1910 of 2001:

1.The State of Tamil Nadu
rep. by its Secretary to Government,
Home (Police.1A) Department.
Fort St. George, Chennai-9.

2.The Director General of Police,
Chennai-4. ..Petitioners

-Vs-

1. S. Nagaraj

2. The Registrar,
Tamil Nadu Administrative
Tribunal, High Court Buiding,
Chennai-104. .. Respondents

W.P.No.1911 of 2001:

The State of Tamil Nadu
rep. by the Secretary to Government,
Home Department,
Fort St. George,
Chennai-9. .. Petitioner

Vs.

1.S. Nagaraj
2. The Commissioner
Tribunal for Disciplinary Proceedings
Tirunelveli-2.

3. The Registrar,
Tamil Nadu Administrative
Tribunal,
Chennai. .. Respondents

Writ petitions filed under Article 226 of the Constitution of India
for issuance of a Writ of Certiorari as stated therein.

For Petitioners : Mr.S.T.S. Moorthy,
Spl.G.P.

For Respondent-1 : Mr.A. Amalraj

:C O M M O N O R D E R
M.KARPAGAVINAYAGAM, J.

The State, the petitioner herein, aggrieved by the orders of the Tribunal reinstating the first respondent,Deputy Superintendent of Police and directing the State to give notional promotion as Additional Superintendent of Police in O.A.No.6229 of 1999 and O.A.No.3838 of 2000 , has filed these two writ petitions in W.P.Nos.1910 of 2001 and 1911 of 2001 respectively.

2. The facts in brief are as follows:

(a)S.Nagaraj, the first respondent herein joined police service as Sub Inspector of Police on 23.11.1965. In 1977, he was promoted as Inspector of Police. In 1991, he was promoted as Deputy Superintendent of Police. He was working as Deputy Superintendent of Police (Law and Order) at Aruppukottai from 14.11.1997 to 21.8.1998. During that period, he organised prohibition raids to curtail illicit sale of arrack. Queens Rathnavel, a native of Aruppukottai owning 9 Wine Shops and 2 Cinema Theatres, met the D.S.P. Nagaraj and requested him to put down the illicit sale of arrack around his area.

(b) On 13.7.1998, the D.S.P. demanded Rs.15,000/- as monthly Mamool for the 9 Wine Shops. Queens Rathnavel expressed his inability to pay the amount. The D.S.P. threatened him that if the amount is not paid, he would book cases against him. On 21.7.1998, Rs.10,000/- was paid. The balance amount of Rs.5,000/- was not paid. So, on 21.7.199 8, the Sub Inspector of Police booked cases against the Theatres as well as the Wine Shops owned by him.

(c) On 23.7.1998, Queens Rathnavel and his men came to the station and shouted at the D.S.P. about the arrest of his men. He was pacified and sent. On 26.7.1998, the D.S.P. contacted Queens Rathnavel over phone and demanded the balance of Rs.5,000/-. As he was not willing to pay the amount, on

28.7.1998, he lodged a complaint with the Deputy Superintendent of Police, Vigilance and Anti-corruption, Virudhunagar and the same was registered against the first respondent in Crime No.2 of 1998 under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act.

(d) A trap was laid. Even though the trap did not materialise, the tainted notes of Rs.5,000/- was recovered from the first respondent and the same was sent to the Chief Judicial Magistrate.

(e) On 19.8.1998, on the basis of the above case, the suspension order was issued. Against this order, the first respondent filed a writ petition before the High Court in W.P.No.2742 of 1999.

(f) On 19.2.1999, the High Court disposed of the writ petition directing the authorities to complete the enquiry within a period of six months and if the enquiry is not completed within the stipulated time, the delinquent officer has to be reinstated.

(g) In the meantime, on 9.9.1998, a panel of D.S.Ps. was prepared for promotion as AD.S.P. On 16.9.1998, the delinquent officer was informed that his name for promotion has been deferred, since he is under suspension and his claim will be considered after proceedings are concluded.

(h) Despite the orders of the High Court directing the enquiry to be completed within six months, the enquiry was not completed. Therefore, on 30.8.1999, the suspension order was revoked and he was reinstated. Accordingly, he joined duty on 16.9.1999.

(i) Thereafter, on 25.9.1999, he filed an application in O.A.No.6229 of 1999 before the Tribunal for quashing the order of the Government dated 16.9.1998 deferring his promotion till the conclusion of the disciplinary proceedings.

(j) On 28.3.2000, the charge memo was issued against the first respondent asking to come and appear before the Enquiry Officer on 27.4.20 00.

(k) The first charge would relate to the demand of Rs.15,000/- as mamool from Queens Rathnavel to curtail illicit sale of arrack and accepted a portion of the amount of Rs.10,000/- from him and demanded the balance amount of Rs.5,000/-, thereby violated Rule 24 of the Tamil Nadu Subordinate Police Officers Conduct Rules. 32 witnesses were cited for proving this charge.

(l) The second charge would relate to the demand of Rs.1,000/- per month from December 1997 to July 1998 from one Ramamoorthy and the demand of Rs.3,000/- and receipt of Rs.2,000/- for the month of July 199 8 from one Bose and the demand of Rs.2,000/- per shop and receipt of bribe from Thavasiana Thevar for the month of July 1998 and the demand and receipt of Rs.1,500/- per shop from Ponnusamy, Sakthivel, Shanmugam and Singapuli to curtail the illicit

sale of arrack. For proving this charge, 26 witnesses were cited.

(m) On the basis of this proceeding, on 18.7.2000, suspension order was issued. On 24.7.2000, on the basis of the suspension, the Government issued order that Nagaraj, the D.S.P. shall not be permitted to retire from service on his reaching the date of superannuation, i.e. on 31.7.2000.

(n) In the meantime, in June 2000, he filed an application in O.A. No.3838 of 2000 seeking for quashing of the charge memo dated 28.3.2000 and to permit him to retire peacefully on 31.7.2000.

(o) On entertaining O.A.No.3838 of 2000, the Tribunal ordered on 13.6.2000 notice of motion returnable by 20.6.2000. The case was subsequently adjourned to 30.8.2000 for filing counter. But, the Tribunal took up the case on 27.7.2000 itself even without the counter and decided the case by going through the files and hearing the arguments of the counsel for the delinquent officer and the Government Advocate and quashed the charge memo. The Tribunal further as a consequential order in O.A.No.6229 of 1999 gave notional promotion as AD.S.P. through the common order dated 27.7.2000.

3. As noted above, these two orders are under challenge in these two writ petitions filed by the State.

4. Mr.S.T.S. Moorthy, the learned Special Government Pleader appearing for the State would mainly attack the impugned orders passed by the Tribunal contending that quashing of the charge memo without allowing the Department to conduct enquiry on the ground of malice is clearly wrong as there is no material whatsoever for such conclusion and as such, the reasonings given in the impugned orders are perverse and the same are liable to be set aside. He would cite number of authorities to substantiate his contention.

5. Arguing contra, Mr.A.Amalraj, the learned counsel for the first respondent in justification of the impugned orders would refer to several judgments including the judgment of the Calcutta High Court referred to in the impugned orders would submit that the charge was a motivated one and there is an enormous delay for framing charges and as such, the writ petitions have to be dismissed.

6. We have heard the counsel for the parties and also gone through the impugned orders.

7. Before going into the merits of the rival contentions urged by the counsel for the parties, it would be worthwhile to refer to the guidelines in the matter of appreciation of the issue and analysis of the materials by the Tribunal, while dealing with the prayer to quash the charge memo without enquiry.

8. Those guidelines are as follows:

(A) The truth or otherwise of the charges is a matter for the disciplinary authority to go into. The Tribunal has no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded

by the disciplinary authority.

(B) The Tribunal should not interfere at an interlocutory stage. It cannot choose to interfere on the basis of the material which is yet to be produced at the inquiry. The Tribunal cannot undertake an inquiry which ought to be held by the disciplinary authority and find that the charges are not true.

(C) The Tribunal cannot go into the exercise of finding out the correctness or otherwise of the charges levelled against the delinquents. It is not permissible under law for the Tribunal to re-evaluate and reassess the evidence and to come to the finding that the charges levelled against the delinquents are not proved. The Tribunal cannot take over the functions of the disciplinary authority.

(D) At the stage of framing of the charge, the statement of facts and the charge sheet alone are required to be looked into by the Tribunal as to the nature of the charges, i.e., whether the statement of facts and material in support thereof supplied to the delinquent officer would disclose the alleged misconduct. The Tribunal cannot go beyond that.

(E) When on a perusal of charges, it is found that the charges are very serious, the Tribunal cannot incline to close the matter only on the ground that about 16 years have elapsed since the date of commencement of disciplinary proceedings, more particularly when the department alone cannot be held responsible for the delay.

(F) It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated, each case has to be examined on the facts and circumstances in that case.

(G) The essence of the matter is that the court has to take into consideration all the relevant factors and balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay, particularly when the delay is abnormal and there is no explanation for the delay.

(H) In considering whether delay has vitiated the disciplinary proceedings, the court has to consider the nature of the charge, its complexity and on what account the delay has occurred. If the delay is unexplained, prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee.

9. These guidelines have been propounded by the Supreme Court in the following decisions:
1)In UNION OF INDIA AND OTHERS v. UPENDRA SINGH (1994(3) S.C.C.357);
2) In DISTRICT FOREST OFFICER v. R. RAJAMANICKAM (2000(9) S.C.C.284);

3)In THE DEPUTY INSPECTOR GENERAL OF POLICE v. K.S. SWAMINATHAN (19 97(1) S.L.R.176);
4)In DEPUTY REGISTRAR, COOP. SOCIETIES v. SACHINDRA NATH PANDEY (19 95(3) S.C.C.134);
5)STATE OF A.P. v. RADHAKISHAN (1998(4) S.C.C.154).

10. Bearing these guidelines in mind, if we look at the present facts of the case, we are constrained to express our shock and displeasure over the impugned orders passed by the Tribunal. It is quite agonising to note that the Tribunal has thrown all these guidelines into the wind while arriving at the hasty conclusion that the charge memo is liable to be quashed.

11. The imputations made against the delinquent officer are extremely serious. The facts alleged, if proved would establish the misconduct and corrupt activities of the delinquent officer. It is surprising to note that even without a counter being filed, and even without considering the question whether the contents of the charges deserved to be enquired into or not, the Tribunal hastened to quash the charges. We could only say rather with pain, "it is quite unfortunate". If the disciplinary proceedings in such serious matters are quashed so lightly as it has been done in this case, it would be extremely difficult to bring any wrong-doer to book.

12. It is settled law that quashing of the charge memo with serious allegations of misconduct and corruption without allowing the Department to conduct enquiry is not at all justifiable. In this case, in the words of the Supreme Court, apparently, the Tribunal proceeded in haste in passing the impugned orders quashing the charge memo even before the ink is dried on the orders passed by the appointing authority.

13. The monstrous feature that we could notice in the impugned order is that although Tribunal has in clear terms observed in the instant case that it is not for the Tribunal to analyse the facts leading to the charge memo; and the power of judicial review which is very much restricted has to be exercised judiciously and reasonably, unfortunately, it has accepted the defence theory blindly. How can there be the appreciation and analysis of the materials of the defence alone without considering the materials through the witnesses to be produced by the prosecuting officer for proving the charges? It is quite amazing.

14. In the case of charges framed in a disciplinary inquiry, the Tribunal can interfere only if on the charges framed no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At the early stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. But, the reading of the orders impugned would go to show that the Tribunal has passed the orders which would indicate that they are the classic example to show how the justice could be made a casuality.

15. Let us now quote the reasonings given by the Tribunal for quashing the charge memo and giving direction for promotion. The reasonings are these:

(A) The corruption case on the complaint of Queens Rathnavel against the D.S.P., the first respondent was registered on 28.7.1998. Even before that date, i.e. on 22.7.1998, six days earlier, Queens Rathnavel and 10 others came to the Station and warned the D.S.P. that he would face the consequences for having registered cases against his Theatres and Wine Shops. For this occurrence, the relevant G.D. entries have been made on 22.7.1998 and 23.7.1998 and report also has been sent to the S.P. on 23.7.1998 and 27.7.1998. These entries would show that in order to wreak vengeance on the D.S.P., a false case has been registered at the instance of Queens Rathnavel on 28.7.1998. Admittedly, there is no trap in this case. The suspension order was passed within a month after registration of the case. Therefore, the entire proceedings have been wrongly initiated only at the instance of the false complaint given by Queens Rathnavel who is indulging in illegal and unlawful activities.

(B) Though the suspension was ordered on 19.8.1998, the charge memo came to be issued only on 28.3.2000. This delay would show that there is a prima facie case of mala fide. The delinquent officer who is a honest and disciplined public servant has been victimised and harassed at the instance of a disgruntled element, the complainant who is interested in perpetuating the illegal and unlawful activities.

(C) As against the suspension order, the first respondent filed a writ petition in W.P.No.2742 of 1999 and direction was issued on 19.2.1 999 that the enquiry must be completed within a period of six months. Despite that direction, the enquiry was not completed. The charges were framed only on 28.3.2000, after lapse of more than a year. When the direction of the High Court has not been obeyed, it would be proper to quash the charge memo.

16. These reasonings and findings, in our view, are patently wrong and without any basis. The Tribunal had not gone into the question whether these entries mentioned in the General Diary were made by the respective officers at the relevant time and whether any report has been sent by D.S.P. to S.P. As a matter of fact, the G.D. entries as produced by the defence dated 22.7.1998 and 23.7.1998 are quite contradictory. The G.D. entries by the Sub Inspector and the Inspector would vary in respect of various particulars with the contents of the alleged report and weekly report stated to have been sent by D.S.P. to S.P. How could then accept the G.D. entries which are self serving documents produced by the delinquent officer before the Tribunal without allowing the Department for conducting enquiry to find out the truth?

17. The peculiar feature which could be noticed is that the alleged threatening incident took place on 23.7.1998, but the entry has been made with reference to the said incident in the G.D. maintained by the Inspector of Police on 22.7.1998 itself. In such a situation, it is quite strange to see that the Tribunal accepted the defence documents which are admittedly contradictory and jumped to the conclusion that Queens Rathnavel and his men came and threatened the D.S.P. for having booked cases against his Theatres and Wine Shops and therefore, he made a false complaint to the Vigilance on 28.7.1998. Simply because Queens Rathnavel is owning 10 Wine Shops and 2

Cinema Theatres, the Tribunal would hasten to conclude that Queens Rathnavel is a disgruntled element dealing in illegal activities and as such, the delinquencies are doubtful, in the absence of any other material.

18. It is the specific case of the Department that he demanded Rs.15 ,000/- as mamool from the complainant Queens Rathnavel and out of that Rs.15,000/-, Rs.10,000/- was paid. When he persisted for the balance amount of Rs.5,000/-, Queens Rathnavel gave a complaint to the Vigilance and a case under Corruption Act has been registered on 28.7.19 98 against the first respondent.
19. According to the Department, the amount has been recovered from the first respondent during a trap. But strangely, the Tribunal has observed that trap has not been organised. Further, the Tribunal has given encomium to the first respondent as a honest and disciplined public servant.
We are at a loss to understand as to how could the Tribunal to give such a clean certificate to the first respondent who has been facing very serious charges.

20. The Tribunal has referred to the non-compliance of the High Court order and the delay in completion of the enquiry without understanding the factual position. On 19.8.1998, on the basis of a corruption case, the first respondent, the D.S.P. was suspended. Against the said suspension order, he filed a writ petition in W.P.No.2742 of 1999. When the writ petition was disposed of by the order dated 19.2.1999 , the High Court directed to complete the enquiry within six months and if the Department is not able to finish the enquiry within six months, he must be reinstated. This order was obeyed by the Department by reinstating the first respondent by the order dated 30.8.1999 since the enquiry was not completed within six months. As per the said order, the first respondent joined on 16.9.1999. How could then the question of non-compliance of the High Court order would arise?
21. Then, by G.O.Ms.No.1300 dated 28.9.1999, the first respondent was placed on his defence before the Commissioner for Disciplinary Proceedings. Accordingly, on 28.3.2000, the Commissioner for Disciplinary Proceedings framed two charges. This was served on the delinquent officer on 16.5.2000. Thereafter, the first respondent filed O.A.No.3 838 of 2000 for quashing the charge memo. Further, the Vigilance Department instead of prosecuting the matter before the Court of law after investigation, recommended to the Department for initiating disciplinary proceedings. Accordingly, the

Commissioner for Disciplinary Proceedings framed the charges on 28.3.2000. As such, there is no delay. Even if there is some delay, the delay has been properly explained.

22. As held by the Supreme Court, it is not possible to lay down any predetermined principles where the delay is caused. Whether on the ground of delay, the disciplinary proceedings are to be terminated, each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all the relevant factors and balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings are allowed

to be terminated after delay.

23. In considering whether delay has vitiated the disciplinary proceedings, the Court has to consider the nature of the charge, its complexity and on what account the delay has occurred. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path, he is to suffer a penalty prescribed. It is true that delay causes prejudice to the charged officer unless it is shown that he is to blame for the delay or when there is proper explanation for the delay in conducting disciplinary proceedings.

24. But in this case, due to the so-called 'delay', the delinquent officer cannot claim prejudice. It cannot also be said that there is an inordinate delay which would vitiate the disciplinary proceedings. In this case, we have to take note of the serious nature of the charge, namely regular receipt of mamool (bribe) from several persons. As such, mere delay would not be a ground to hold that the disciplinary proceedings are vitiated. The Tribunal without considering these things rushed to the conclusion that it is a mala fide simply because there is a delay. As noted above, there is no basis for such conclusion.

25. As a matter of fact, the Apex Court in 1995 (3) S.C.C.134 (supra), has held that mere elapsing of a long period of 16 years from the date of commencement of departmental enquiry would not be a sufficient ground to close the matter.

26. The impugned orders can be looked at from yet another angle. The entire reasonings given by the Tribunal would relate to the first charge alone. The Tribunal has conveniently forgotten the second charge. As noted above, there are two charges. The first charge is with reference to the complaint of Queens Rathnavel. The charge memo contains the names of 32 witnesses. With reference to the second charge, four incidents were shown where the D.S.P., the delinquent officer received the bribe amounts on various occasions from four persons. To prove the second charge, 26 witnesses were cited. Admittedly, the Tribunal neither referred to this second charge nor concluded that the contents of this charge would not show any misconduct. As such, without allowing the authorities to examine the witnesses cited in both the charges, the Tribunal concluded that the proceedings are mala fide by simply observing that the complainant Rathnavel is a disgruntled element.

27. As indicated above, this observation against Queens Rathnavel is not supported by any material. Further, the Tribunal has completely omitted the second charge which would relate to the complaints by four other persons. Thus, it is evident that the impugned orders would reflect the perversity and as such, conclusion is the outcome of lack of application of mind.

28. The counsel for the respondent lastly contended that even if this Court finds that the impugned order is not valid in law, fresh enquiry need not be ordered in view of the fact that the first respondent had already

superannuated. He has cited the decisions in BHUPINDER PAL SINGH v. DIRECTOR GENERAL OF CIVIL AVIATION (2003(3) S.C.C.633) and UNION OF INDIA v. RAJBIR SINGH KHANNA (2001(7) S.C.C.113).

29. The facts of these cases would not help the first respondent. The first case would deal with the order of removal after departmental enquiry which was held to be clear violation of the principles of natural justice. Therefore, the Apex Court in that case would hold that de novo inquiry is unnecessary. In the latter case, the Supreme Court taking into consideration the matter travelled up to the Supreme Court as a third round of litigation and keeping in view of the totality of the circumstances of the case, would hold that the general court marshal proceedings shall stand dropped.

30. These observations have been made by the Supreme Court taking into consideration the various other factors and also the nature of the allegations. But, in this case, the nature of the allegations, namely misconduct and corruption are so serious and his superannuation was in 2000 and only four years have elapsed.

31. Considering the impugned order in any angle, we are to conclude that the same is illegal and consequently, we have no hesitation in setting aside the impugned order of the Tribunal. We direct that the disciplinary proceedings against the delinquent officer in terms of the charge memo dated 28.3.2000 shall be proceeded with in accordance with law. The disciplinary proceedings should be proceeded with immediately on receipt of this order and the same should be finished within twelve months thereafter.

32. It is made clear that the Enquiry Officer is required to give his finding on the basis of the materials produced by both the parties uninfluenced by any of the observations made by this Court with reference to the defence.

33. To sum up:
i)The common order passed by the Tribunal in O.A.No.6229 of 1999 and O.A.No.3838 of 2000 is set aside.
ii)The disciplinary proceedings against the first respondent, the delinquent officer in terms of the charge memo dated 28.3.2000 are directed to be proceeded with in accordance with law.
iii)The disciplinary proceedings should be proceeded with immediately on receipt of this order and the same should be finished within twelve months thereafter.

Index :Yes
Internet:Yes

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